

notice thereof, and demanded delivery to him of the said debentures, but that defendant, though frequently requested, had neglected and refused to deliver the same to Hibbard or to the plaintiff. The declaration concluded by praying that defendant be condemned to deliver to the plaintiff the said debentures and coupons, and in default of delivery, be condemned to pay \$35,000, with interest thereon from 2nd January 1874, the date of the said debentures, and also interest on the amount of each coupon from the date when the same became due.

The defendant, in an amended plea, stated: That he ceded to Hibbard his rights under the deed of 17th October 1872, in consideration of 35 debentures, which Hibbard handed over to defendant under an arrangement that they were to be paid or else exchanged for debentures in other solvent companies, within one month from the handing over, and that it was upon these terms that the receipt of the 15th May, 1875, and the order of the 19th May were signed and handed by defendant to Hibbard; that afterwards, in April, 1876, Hibbard having made over to defendant his contract for the construction of the said railway, handed back to him the said receipt of 15th May and the order of the 19th May, 1875, and ceded back to him in this manner the rights under the deed of 17th October, 1872; that it was at the same time agreed between Hibbard and defendant that defendant should keep the said debentures in consideration of certain advances made by him to Hibbard, and that in case he sold the said debentures, he should render account to Hibbard of the proceeds of the sale, as he is still bound to do, setting off in such account the sums due by Hibbard to him which have not yet been settled, although the defendant has often requested Hibbard to do so; and that the balance in favour of the defendant far exceeds the value of the debentures.

Both Courts have found against the defendant upon that plea; and as to the arrangement which it was said that Hibbard had made with him. That being the case, it appears that Hibbard having handed over 35 debentures to Senécal in consideration of the transfer of the subsidy of the Govern-

ment to the railway company, Senécal repudiated the agreement, and subsequently sold the right to the subsidy to another person. Under these circumstances, it became his duty to return the debentures to Hibbard. He did not do so, and Hibbard transferred the debentures to Hatton. The arrangement which was stated by Senécal as an answer to the action—that Hibbard had agreed with him that he should sell the debentures and account for the proceeds—was found by the Courts not to have been proved.

The Superior Court, in the first action, gave judgment for the plaintiff and condemned the defendant to deliver to the plaintiff the 35 debentures within 15 days from the date of the judgment, and in default to pay to the plaintiff \$35,000 as the value of the debentures. On appeal, the Queen's Bench reduced the amount and valued the debentures at 25 cents to the dollar. The judgments were perfectly right in ordering the debentures to be returned and handed over to Hatton, and that in default of their being handed over, the defendant should pay the value of them.

It has been contended that the Court of Queen's Bench was wrong in valuing the debentures at 25 cents to the dollar. It appears to their Lordships that there was evidence upon which the Court were fully justified in arriving at that conclusion. There was evidence that on the 29th of November, 1882, similar debentures were sold at 25 cents to the dollar.

Under these circumstances their Lordships are of opinion that there was no error in the judgment of the Court of Queen's Bench.

In the other action by Senécal against Hibbard, Senécal relied upon the facts which he had set up in his defence to the first action, and complained that, notwithstanding the facts alleged, Hibbard had wrongfully transferred the debentures to Hatton, who had commenced an action against the plaintiff to recover the same; and concluded by praying that the defendant Hibbard should be made to intervene in the first action, and admit or deny the allegations of the defence therein, and produce a statement of all existing accounts between him and Senécal, and declare whether he had not on several occas-